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FEDERAL COMMUNICATIONS COMMISSION
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February 14, 1994

93-292

HAND DELIVERED

Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C.

RE: In the Matter of Policies and Rules Concerning Toll Fraud
CC Dkt. ~~92-292~~ - Request to File/Ex Parte Comments

Dear Sir:

Pursuant to Sections 1.41, 1.44, 1.415(d), 1.419(b), and 1.1206(a)(1) of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. 1.41, 1.44, 1.415, 1.419 (1993), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully requests that the Commission "authorize", within the meaning of Section 1.415(d), NARUC's attached out-of-time reply comments ("Comments") in the above-captioned proceeding. Alternatively, NARUC requests that those Comments be deemed written **ex parte communications** within the meaning of Section 1.419(b) and 1.1206 of the Commission's regulations.

In support of this request, NARUC notes the following:

(1) NARUC has participated in a timely fashion in the FCC's earlier toll fraud proceedings, including the File No. 93-TOLL Fraud - 01 [DA-1464] proceeding the instant NPRM is based upon;

(2) Due to an unfortunate combination of events related to the replacement of NARUC counsel's computer's hard drive last week, NARUC counsel just missed the 5:30 deadline for filing;

(3) Section 1.415(d) of the Commission's Rules states that "...[n]o additional...", *i.e.*, out-of-time, "...comments may be filed unless specifically requested or authorized by the Commission."

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*Member of the Executive Committee of the Association

If such Section 1.415 authorization is not forthcoming, subject to certain conditions, one can still file "informal" ex parte comments after the deadline for reply comments. [See 47 C.F.R. Section 1.419(b), which states that "[i]nformal comments filed after close of the reply comment period...should be labeled "ex parte" pursuant to section 1.12066(a) of this Chapter."]

(4) The subject matter at issue in this proceeding is of undeniable and significant interest to NARUC's state commission membership;

(5) No other participant's comments can adequately represent the viewpoint of NARUC's membership. This viewpoint is necessary to fully illuminate the issues raised by the FCC's proposal and assure a complete record upon which to base a decision. Hence, granting the requested authorization and/or waivers will serve the public interest by ensuring NARUC's full participation.

(7) No other participant will be prejudiced by allowing this late filing as

- (a) NARUC is filing its reply on the next business day after the scheduled date, [the FCC was closed due to inclement weather on the 11th],
- (b) this is the reply round of comments and no formal rebuttal to this round of comments is scheduled; and
- (d) any party remains free to file ex parte a response to this and any other reply filed timely last friday at the Commission.

Accordingly, NARUC respectfully requests that the Commission grant any waivers and/or authorizations necessary to allow filing comments out-of-time in the above-captioned proceeding. Alternatively, NARUC requests that its Comments be deemed written **ex parte communications** within the meaning of Section 1.419(b) and 1.1206 of the Commission's regulations.

Respectfully submitted,


JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of

POLICIES AND RULES
CONCERNING TOLL FRAUD

CC Docket No. 93-292

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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February 10, 1993

In the Matter of
POLICIES AND RULES CONCERNING TOLL FRAUD

CC Docket No. 93-292

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of

POLICIES AND RULES
CONCERNING TOLL FRAUD

CC Docket No. 93-292

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.49, 1.415, and 1.419 (1993), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments addressing the Commission's December 2, 1993 Notice of Proposed Rule Making ("NPRM"), [FCC 93-496], as adopted November 10, 1993 and released December 2, 1993, in the above-captioned proceeding:

I. INTEREST OF NARUC

NARUC is a quasi-governmental nonprofit organization founded in 1889. Its membership includes governmental bodies engaged in the regulation of carriers and utilities from all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. The NARUC's mission is to improve the quality and effectiveness of public utility regulation in America. More specifically, NARUC is composed of, inter alia, State and territorial officials charged with the duty of regulating the telecommunications common carriers within their respective borders.

As such, they have the obligation to assure the establishment of such telecommunications services and facilities as may be required by the public convenience and necessity, and the furnishing of service at rates that are just and reasonable.

The FCC has initiated a rulemaking to examine ways to limit toll fraud in this proceeding. Obviously, the FCC's proposals may have direct effects on existing and pending state initiatives that deal with the same issues. Accordingly, the FCC's proposed action raises issues of concern to NARUC's State commission membership.

II. BACKGROUND

In the face of toll fraud losses estimated at from \$1 to \$5 billion dollars annually, at NARUC's March 1993 meetings, the Communications Committee sponsored a generic resolution concerning the issue. That resolution, which is appended as Appendix A, recognizes that the FCC and various other organizations such as the Exchange Carriers Standards Association [now ATIS], Stentor Alliance of Canada, International Communications Association, American Public Communications Council and other segments of the industry have taken steps to examine the increasing magnitude of PBX and pay phone toll fraud. The resolution directs the NARUC general counsel to "file papers and other documents supporting the policies of this resolution in the appropriate forums." The resolution recommends the following:

- o That industry and regulators jointly undertake a public information campaign to educate telecommunications users about toll fraud;
- o That regulators, industry, and law enforcement agencies work together to request Congress to enact legislation that appropriately responds to the toll fraud problems and issues, including increased penalties;

- o That the regulators, industry and law enforcement agencies work together to share information on system and equipment vulnerabilities which allow toll fraud to occur;
- o That the toll fraud detection and prevention programs developed by the major IXC's should be offered to customers at cost in order to minimize the costs of responding to the toll fraud problem;
- o That toll fraud detection and prevention programs should be developed by the LECs and offered under state tariff to customers in order to minimize the cost of responding to toll fraud; and finally,
- o That States should assign such responsibilities, liabilities and other obligations equitably, in a manner that recognizes those steps within a provider's control that can be taken to control toll fraud.

In response to the resolution, NARUC has already filed comments in the following three FCC proceedings: (1) IN THE MATTER OF THE COMMISSION'S TOLL FRAUD INQUIRY (File No. 93-TOLL Fraud - 01 [DA-1464]), (2) IN THE MATTER OF FLORIDA PUBLIC SERVICE COMMISSION'S PETITION FOR REVIEW OF TARIFF PROVISIONS RELATING TO LIABILITY FOR TOLL FRAUD CHARGES (File No. 93-TOLL Fraud - 02), (3) IN THE MATTER OF POLICIES AND RULES CONCERNING OPERATOR SERVICE ACCESS AND PAY TELEPHONE COMPENSATION (CC Docket 91-35).

Subsequently, on December 2, 1994, based on the earlier inquiry in File No. 93-TOLL Fraud - 01, the FCC issued the instant NPRM. The purpose of the NPRM is to identify additional policies the FCC should establish to reduce the risks of toll fraud.

One Hundred and Forty Two entities filed comments in response to the FCC's proposals. Both the NPRM and the commentors raise several issues addressed by NARUC's resolution.

III. DISCUSSION:

In paragraph 13 of the NPRM, mimeo at 9, the FCC, requests comment on specific ways to achieve closer and continuing coordination among institutions fighting toll fraud, specifically suggesting the possible creation of a federal toll fraud advisory committee. In the same paragraph, the Commission asks if it should join with law enforcement authorities to encourage "Congress to enact legislation that clearly defines and penalizes this criminal activity and gives law enforcement the tools it needs to track and prosecute perpetrators...." and queries how the FCC can broaden its own and industry consumer education efforts on the risks of, and preventative measures available to combat, toll fraud. As part of its education efforts, the FCC specifically proposes imposing labeling requirements upon vendors. As already noted in this and previous filings, NARUC supports the FCC's initiatives in each of these three areas. Moreover, as discussed below, the record compiled thus far in this proceeding indicates that the majority of industry participants support these efforts also.

- A. The FCC should join with others to ask Congress to enact legislation that appropriately responds to the toll fraud problems and issues, including increased penalties.**

While NARUC has not taken a specific position on the types of measures that should be encouraged, NARUC joins the overwhelming majority of commentors in urging the FCC to ask Congress to enact appropriate legislation.

As the FCC accurately states in the NPRM, mimeo at 8, ¶ 12, because "there is no specific federal legislation regarding toll fraud, prosecutors must deal with the limited effectiveness of the existing criminal statutes." The majority of commentators agree. For example, over 60 businesses that own PBXs filed comments contending that, until prosecutors are given effective tools, toll fraud will continue to grow beyond the \$5 billion problem it is today. They all urge the FCC to see legislation that clearly defines and penalizes this criminal activity and gives law enforcement the tools it needs to track and prosecute perpetrators.¹

¹ See, the January 14, 1994 Initial Comments filed by AgiBank, American General Financial Center, American Speech-Language-Hearing Ass'n, AmSouth Bank of Florida, APA/NPA, Ask-A-Nurse, Bessemer & Lake Erie Railroad Co., Blue Cross Blue Shield of RI, BNK & R, Inc., Brunschwig & Fils, Caterpillar Inc., Central Products Co., Chicago Convention & Tourism Bureau, Inc., Connie North, Cooper Industries - Crouse Hinds Div., Crawford & Co., Crocker Fels, CSE Insurance Co., Delaware Valley Medical Center, Donald Gore, El Paso Water Utilities Public Service Board, Ernst & Young, FOG, Flex Communications, Florence Rosol, Glen Ellen Clinic, Global DEFINITY Users Group, H.G. Zachary Co., Halliburton Co., Hewlett-Packard, Himont USA Inc., ILC Data Device Corp., Indiana University, Joan McCarthy, JR Simplot Co., Judith Rhein Johnson, Kansas Turnpike Authority, KDKA-TV 2, Keystone Investor Resource Center, Inc., KUTV Inc., Legent Corp., Liberty Diversified Industries, LTV Steel Co., M.D. Health Plan, Mark Oleck, Masco Corp., Matsushita Electric Corp. of America, Mead Products, Mercy Healthcare, Inc., MetroNorth Commuter Railroad, Mid-Continent Life Insurance Co., Midwest Express, Milbank, Tweed, Hardley & McCloy and Anne M. Cosmai, Mobil Corp., National DEFINITY Users Group, Inc., Northrup King, OBICI Hospital, Pace Foods, Inc., Pennock, Pete Jella, Pottstown Memorial Medical Center, Preformed Line Products, PRIMUS Automotive Financial Services, Inc., Raleigh Technology Group, Inc., Raymond J. Dzek, Saint Margaret Memorial Hospital, Sara Lee Corp., South Seas Resort Co., Stormont-Vail Regional Medical Center, Tele-Communications Ass'n, Greeley Medical Clinic, Inc., Green Point Savings Bank, Mid-America Group, Union Central Life Insurance Co., University of Oklahoma, Wilkerson Group, Inc., Thomas Hospital, U.M.I, United Fire & Casualty Co.- United Life Insur. Co., USL Capital, West Georgia Medical Center, Westvaco, Wm. C. Brown Communications, Inc., and WYSE Advertising.

These PBX owners are not alone in urging the FCC to take action. Representatives from almost every industry group joined in urging the FCC to ask for appropriate legislation. For example, Ameritech stresses that the language in statutes must include specifics that address the broad range of fraudulent activities constituting criminal offenses. Ameritech comments continue by arguing, as suggested by NARUC's resolution and the record compiled in the FCC's En Banc hearings, that the classification of these crimes and the penalties associated with conviction must be upgraded to serve as an effective deterrent.² The other Bell Holding Companies and a local exchange carrier organizations make similar comments.³ Interexchange carriers,⁴ governmental groups,⁵

² See, Ameritech's January 14, 1994 Initial Comments at 2.

³ See, the January 14, 1994 Initial Comments of Bell Atlantic, at 1, asking the FCC to support federal legislation to make toll fraud a crime, BellSouth, at 2, supporting enactment of toll fraud legislation, NYNEX, at 22-23, recommending that laws be modified to more clearly place the enforcement of such rules within the jurisdiction of the Secret Service and to criminalize possession of (1) a cellular phone in violation of § 22.929 of the FCC's rules, or of (2) scanning receivers or hardware and/or software used to alter cellular phones, SNET, at 4, supporting federal legislation to encourage the development of the technical resources necessary to prevent and prosecute toll fraud, and the United States Telephone Association, at 2, urging the FCC to assist Congress in crafting legislation to punish toll fraud.

⁴ See, the January 14, 1994 Comments of AT&T at 38, asking the FCC to encourage enforcement of existing criminal statutes and the adoption of more effective fraud prevention statutes, MCI, at 18-20, urging the FCC to propose legislation to Congress that would give law enforcement a better ability to track and prosecute fraud specifying support for enactment of a specific federal criminal statute and suggesting that consideration should be given to amending certain federal laws that may hinder fraud investigations, and, Sprint, at 2, welcoming efforts by the FCC to help persuade Congress to enact more specific legislation to penalize toll fraud.

cellular companies,⁶ manufacturers,⁷ and various user groups⁸ also filed comments urging the FCC to solicit Confessional action.

NARUC joins these other parties in asking the FCC to "to request Congress to enact legislation that appropriately responds to the toll fraud problems and issues, including increased penalties."⁹

⁵ See, the January 14, 1994 Initial Comments of Pinellas County, at 3, pointing out the dire need for additional federal legislation imposing harsh penalties for telephone fraud and mandatory restitution provisions, City of New York, at 5, strongly endorsing the FCC's recommendation to join with law enforcement authorities to encourage Congress to enact new laws.

⁶ See, the January 14, 1994 Initial Comments of Vanguard, at 10, suggesting that criminalization of telecommunications fraud is vital and asking the FCC to recommend to Congress that specific criminal laws be enacted, and, at 11, noting that current statutes do not cover possession or manufacture of equipment used for cellular fraud and contending that the FCC should recommend that Congress and state legislatures prohibit possessing cellular telephones with tumbling ESNs or that are cloned, manufacturing such phones, or altering existing phones to clone them or give them tumbling ESNs.

⁷ See, the January 14, 1994 Initial Comments of Northern Telecom, at 7, supporting stronger penalties for toll fraud.

⁸ See, the January 14, 1994 Initial Comments of the American Petroleum Institute, at 17-9, encouraging the enactment of legislation and a push for toll fraud prosecution, and Planned Parenthood of New York City and Reynolds and Reynolds, at 13-14, encouraging the FCC to initiate cooperation with Law enforcement agencies in the furtherance of criminal penalties for toll fraud.

⁹ See Appendix A - NARUC's March 1993 Resolution on Toll Fraud.

- B. The FCC should work to create mechanisms that assure that regulators, industry and law enforcement agencies work together to share information on system and equipment vulnerabilities which allow toll fraud to occur and jointly undertake a public information campaign to educate telecommunications users about toll fraud.

NARUC is already on record as urging a cooperative approach among industry, regulators, and law enforcement authorities to educate the public and share information to make fraud more difficult and make apprehension of perpetrators more likely.

Although NARUC has not taken a specific position supporting the federal advisory committee posed in the NPRM, we do support the cooperative approach the creation of such a committee would engender. Should the FCC determine to go ahead with this proposal, we also agree with the recommendation of the Office of Information Resources of the South Carolina Budget and Control Board Division of Operations that any such an committee include state governmental entities, including, of course, State public utility commissioners.

A wide range of commentators also agree that some sort of cooperative effort involving regulators and industry is necessary. For example, Comptel, at 1, of its Initial Comments, suggests that a new Federal Advisory Committee might work well to broaden consumer education initiatives and strengthen law enforcement tools. The American Public Communications Counsel also argues, at 3 of their comments, that the cooperative approach inherent in a new federal advisory committee representing all affected interest - would have significant advantages over existing efforts.

The City of New York, in a similar vein, recommends that the FCC establish a public-private Council on Telecommunications Fraud which would include representatives from the telecommunications industry, consumers, equipment vendors, law enforcement agencies, Congress, the Commission, state, and local regulatory agencies.

Aside from this specific proposal for a policy committee, almost all the comments filed emphasize the importance of educational efforts at all levels.¹⁰ Accordingly, NARUC again urges the FCC to (i) continue in its efforts to facilitate collaborative efforts involving other regulators, industry and law enforcement agencies to share information on system and equipment vulnerabilities and (ii) jointly undertake public information campaigns to educate telecommunications users about toll fraud.

¹⁰ See, e.g., the January 14, 1994 Initial Comments of Ameritech, at 2, suggesting that customer education and awareness will play a key role in addressing this issue, Bell Atlantic, at 5-6, stating that its companies have already actively implemented increased fraud-control programs and begun a series of customer education efforts, BellSouth, at 3, emphasizing its efforts to educate customers of the risk and of effective countermeasures, Pacific Bell & Nevada Bell, at 4-6, discussing their companies' fraud protection programs, AT&T, at 3-8, contending the NPRM correctly proposes to require education initiatives, recommending that all carriers collectively be required to distribute an annual notice to all customers regarding toll fraud, and concurring with the FCC's proposal to amend Part 68 to require that manufacturers of PBX-type equipment to provide toll fraud warnings, MCI, at 34, discussing its programs and agreeing that equipment manufacturers, vendors, and LECs have obligations to inform customers, WillTel, Inc., at 8, suggesting that customers should be educated about the specific steps they should take to prevent and detect fraud, Pennsylvania PSC, at 4, suggesting that tariff liability provisions should recognize an obligation by the carrier to warn customers of the risks of using carrier services, New York City's recommendation, at 3-5, that consumer education initiatives be included as a high priority, and ACUTA, at 3, arguing that consumer education is essential to stem toll fraud.

- C. Toll fraud detection and prevention programs developed by the major IXCs should be offered to customers at cost in order to minimize the costs of responding to the toll fraud problem.

In ¶ 26 of the NPRM, mimeo at 14, the FCC asks if it should require "IXCs and LECS to offer customers protection through monitoring services, on what basis that service should be offered, and whether such services should also be part of the basic interexchange service offering."

Some commentators suggest that IXCs tariff a monitoring service. For example, Stephen Satchell, at 7 of his comments, argues that the IXCs or LECs, or both, can offer fraud detection or blocking services at additional cost, subject to tariff restrictions. TCA, at 5 of their comments, suggest that, as all IXCs can provide real-time monitoring of both inbound 800 and outbound calls, such monitoring should be made universally available. Others made similar suggestions. NARUC has not taken a position on the types of programs that IXCs should offer. However, to the extent such programs exist or are developed, NARUC contends that such IXC programs should be offered at cost. By requiring IXCs to offer these programs at cost, the FCC will reduce the overall costs associated with responding to the toll fraud problem.

- D. Toll fraud detection and prevention programs should be developed by the LECs and offered under state tariff to customers in order to minimize the cost of responding to toll fraud; States should be encouraged to assign the responsibilities, liabilities and other obligations equitably, in a manner that recognizes those steps within a provider's control that can be taken to control toll fraud.

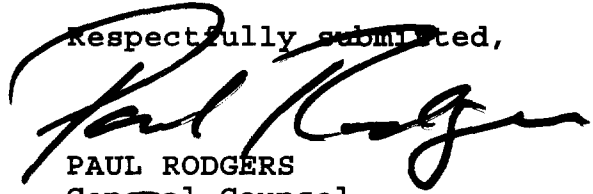
In ¶ 25 of the NPRM, mimeo at 14, the FCC asks for comment on "whether to apportion the cost of CPE-based fraud based on whether carriers, CPE owners, equipment manufacturers, or possibly others were in the best position to avoid, detect, warn of, or control the fraud." A number of commentors filed comments in accord with this approach. For example, TCA, at 3 and 5 of its comments, suggests that the responsibility for controlling toll fraud must be allocated in a manner that recognizes the relative ability to reduce or eliminate that fraud. The Pennsylvania PUC, at 10-11, suggests that payphone providers be required to take reasonable steps where available. Bell Atlantic, at 3-5, urges the FCC to adopt rules to provide for a "no-fault" cost sharing mechanism available to all service providers in a position to control certain types of fraud that use the features available to them. NARUC has not taken a position on the specifics of federal measures to apportion the costs of fraud. However, the FCC's proposal seems consistent with the NARUC's expressed resolve to encourage all States "....to assign the responsibilities, liabilities and other obligations equitably, in a manner that recognizes those steps within a provider's control that can be taken to control toll fraud."

Notwithstanding this consistency in thematic approach, one potential inconsistency in the NPRM is the suggestion that LECs tariff fraud prevention programs at the federal level. NARUC's March 1993 resolution contends that toll fraud detection and prevention programs should be developed by the LECs and offered under state tariff to customers. According to our resolution, this will "...minimize the cost of responding to toll fraud." Compare, GTE's Initial Comments, at 6-13, suggesting that a nationwide policy of federal tariffing of blocking and screening services will not necessarily achieve the FCC's goals.

IV. CONCLUSION

NARUC respectfully requests that the Commission carefully examine and implement the proposals described, supra.

Respectfully submitted,



PAUL RODGERS
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February 10, 1994

APPENDIX A - Resolution on Telecommunications Toll Fraud

WHEREAS, various organizations such as the FCC, the Exchange Carriers Standards Association, Stentor Alliance of Canada, International Communications Association, American Public Communications Council and other segments of the industry have taken steps to examine the increasing magnitude of PBX and pay phone toll fraud; and

WHEREAS, toll fraud occurs through the unauthorized ingress and egress of a customer's telecommunications system, causing losses estimated at from \$1 to \$5 billion dollars annually; and

WHEREAS, the International Communications Association members have experienced toll fraud involving thefts totaling more than \$73,500,000 over a three year period; and

WHEREAS, it is unclear how law enforcement agencies enforce prohibitions against this criminal activity; and

WHEREAS, there is no uniform policy or structure for the management of toll fraud liability issues among the affected industry segments; and

WHEREAS, the FCC has ordered LECs to tariff international direct dialed blocking service in interstate tariffs; and

WHEREAS, assignment of responsibilities, liabilities, and obligations among and between the various providers who are potentially responsible for toll fraud must be determined; and

WHEREAS, states such as Florida, Texas and California have taken significant action to examine and address the responsibilities, liabilities, and obligations of all providers to take steps to prevent and control toll fraud and the assignment of liability when fraud occurs; now therefore be it

RESOLVED, that the National Association of Regulatory Utility Commissioners (NARUC), assembled at its February, 1993 Winter Meetings in Washington, D.C., commends the FCC for holding an en banc hearing to call attention to the seriousness of the toll fraud

problem and for assuming a leadership role in addressing this issue; and be it further

RESOLVED, that the industry and regulators jointly undertake a public information campaign to educate telecommunications users about toll fraud; and be it further

RESOLVED, that the regulators, telecommunications industry (both regulated and non-regulated sectors) and law enforcement agencies work together to request Congress to enact legislation that appropriately responds to the toll fraud problems and issues, including increased penalties for this criminal activity; and be it further

RESOLVED, that the regulators, telecommunications industry and law enforcement agencies work together to share information on system and equipment vulnerabilities which allow toll fraud to occur; and be it further

RESOLVED, that the toll fraud detection and prevention programs developed by the major IXCs should be offered to customers at cost in order to minimize the costs of responding to the toll fraud problem; and be it further

RESOLVED, that toll fraud detection and prevention programs should be developed by the LECs and offered under state tariff to customers in order to minimize the cost of responding to toll fraud; and be it further

RESOLVED, that NARUC encourage states to assign such responsibilities, liabilities and other obligations equitably, in a manner that recognizes those steps within a provider's control that can be taken to control toll fraud; and be it further

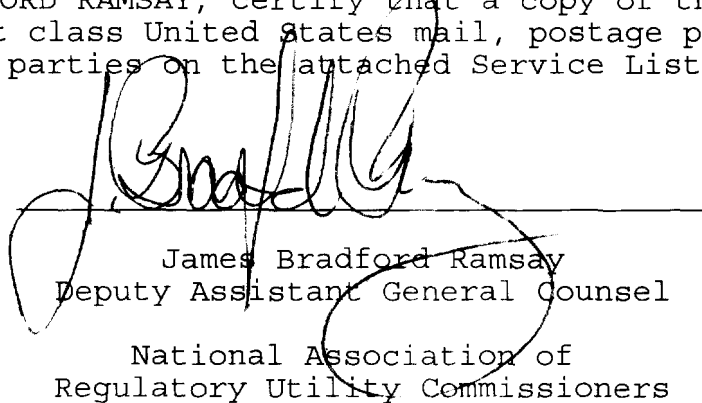
RESOLVED, that NARUC should support the efforts of states that seek FCC action to address toll fraud in a manner consistent with the state's efforts; and be it further

RESOLVED, that the NARUC General Counsel shall file papers and other documents supporting the policies of this resolution in the appropriate forums to further this recommendation.

Sponsored by the Committee on Communications
Adopted March 4, 1993

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.



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